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in the case of *Moxie Nerve Food Co. v. Beach*, 35 Fed. Rep. 465, and the court, relying upon the argument in the case of *Tetlow v. Savournai*, 15 Phila. 170, 11 Weekly Notes Cases 191, where a rule for attachment against the plaintiff for his refusal to answer as to what ingredients entered into the composition of his powder was dismissed, said: "It must be admitted the question is not free from difficulty. I am strongly impressed that it would be inequitable to force the witness to make the disclosures called for, and therefore unless bound by authority, I must deny the motion. If these questions must be answered, every manufacturer will be at the mercy of anyone who desires to extort from him an account of his process, for an attempt to restrain an infringer would result in the disclosure of all that makes the invention valuable." In *In re Pac. Ry. Com'n.*, 32 Fed. Rep. 241, 254, the commission was held limited in its inquiries as to the interest of the directors in any other business, company, or corporation, to such matters as these persons may choose to disclose. To conclude this note, we quote from the case of *Dobson v. Graham*, 49 Fed. Rep. 17: "The plaintiff filed his bill charging infringement of his rights without having any positive knowledge upon the subject. He seems to have relied upon the chance of obtaining evidence to support the charge from the defendant and his workmen. Such a case is not entitled to the special favor of a court of equity. These secrets of his [defendant's] business, if they cover nothing unlawful are his property and as well entitled to protection as the rights secured by plaintiff's patent. If it were shown that these secrets are used as a cloak to cover an invasion of the plaintiff's rights, or if there was reliable evidence tending to show it, and justifying the belief that they are sound, the motions would be sustained. But there is no such evidence before us." *Stokes Bros. Mfg. Co. v. Heller*, 56 Fed. 297. The decision in the principal case is, we believe, clearly right and will have a tendency to settle the heretofore uncertain rules governing this justifiable privilege.

RIPARIAN OWNER'S TITLE TO CONTIGUOUS ISLANDS.—In *Webber v. Axtell* (1905), — Minn. —, 102 N. W. 915, an early patentee of land on the shore of a small lake and later patentees of an island opposite the first patentee's shore lots are in dispute over the title to the island. The lake in this case is about three and one-half miles long by one-half or three-fourths of a mile wide, and was meandered by the government surveyor in 1857, when the island was marked on the plat and indicated in the surveyor's notes as containing about two acres, though no actual survey of it was then made, nor was there any indication on the plat that it was reserved as a part of the public domain. It was about fifteen rods from the shore lots which plaintiff entered and patented under the homestead law, and it appears to have been claimed by him as part of his original grant for nearly twenty years, after which time the government caused it to be surveyed and conveyed to the present defendant's grantor. When the present action to recover the island was begun accretions had established a sand-bar between the island and the original patentee's shore lots, though there was no such connection between

the mainland and the island when the patents were issued. The court holds that the riparian rights of the first patentee vested in him a contingent interest in all relictions and accretions which included the island at the date of the patent from the government, and that he could not be deprived by the later patent of this vested interest. LEWIS, J., dissents from the majority's view that, as he states it, "the riparian owner acquired with his patent to the shore land a contingent interest in and to the island, based upon the possibility that at some future time, either by the action of or the recession of the waters, the island would become connected with the mainland, regardless of other rights subsequently acquired." Both the majority and the minority cite the case of *Lamprey v. State*, 52 Minn. 181, 18 L. R. A. 670, 38 Am. St. Rep. 541, but no other Minnesota case, as sustaining their respective views.

The conclusion of the majority might have been sustained on what seems to have been the common law rule in such cases that on *non-tidal* waters generally the shore owner may own the bed of the lake or stream to its center line (*Bristow v. Cormican*, L. R. 3 App. Cas. 641; *Hardin v. Jordan*, 140 U. S. 371) and consequently owns islands between his shore line and this central line, unless they are specially excepted from the grant to him of the shore. (*Chandos v. Mack*, 77 Wis. 573, 20 Am. St. Rep. 139, 10 L. R. A. 207; *Butler v. G. R. & I. R. Co.*, 85 Mich. 246, 24 Am. St. Rep. 84, Aff'd 159 U. S. 87; *Goff v. Cougle*, 118 Mich. 307, 42 L. R. A. 161). It is true that in *Bristow v. Cormican* it was simply decided that the crown has of common right no *prima facie* title to the soil of a lake, and it was not decided that adjoining proprietors should be regarded as owning to the center of the lake; and it seems to be true also that precisely what the rights of shore owners would be in the bed of the lake has not been decided in England. But the common law test of public or private ownership to sub-aqueous land appears to have been the ebb and flow of the tide (*Murphy v. Ryan*, 2 Ir. C. L. Rep. 143, *Pearce v. Schotcher*, L. R. 9 Q. B. D. 162, Leake "Uses and Profits of Land," pp. 153, 156, 158, 159, 162, 180, 182), rather than the water's actual navigability, which is, at best, an uncertain guide. (*Cobb v. Davenport*, 32 N. J. L. 369).

The form of the long and comparatively narrow lake in the principal case would have made it possible to establish a center line from one end of it to the other, which should be considered its thread (as suggested in *Scheifert v. Briegel*, 90 Minn. 125, 96 N. W. Rep. 44, 101 Am. St. Rep. 399); and were the common law doctrine consistently recognized in Minnesota the solution of the questions presented in such cases would seem more simple. But in that state navigability is the test applied in determining whether the bed of the lake is public or may be private property, though the decisions leave one in some doubt as to what exactly "navigability" is (*Lamprey v. State*, *supra*; *Shell v. Matteson*, 81 Minn. 38; *Lamprey v. Danz*, 86 Minn. 317). The tidal test is at least certain, and where this is applied there is no inconsistency in excepting such inland seas as the Great Lakes from its operation and holding that private ownership extends only to the water's edge, and consequently does not embrace contiguous islands. (*People v. Warner*, 116 Mich. 228; *Sherwood v. Commissioner State Land Office*, 113 Mich. 227.)